



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

JRE
Docket No: 1559-99
11 April 2000

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 6 April 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the advisory opinion furnished by the Navy Central HIV Program dated 15 February 2000, a copy of which is attached.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection, the Board substantially concurred with the comments contained in the advisory opinion. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official

records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosure



DEPARTMENT OF THE NAVY
BUREAU OF MEDICINE AND SURGERY
2300 E STREET NW
WASHINGTON DC 20372-5300

IN REPLY REFER TO

6200
Ser 02H/0039
15 Feb 00

From: Head, Navy Central HIV Program
To: Chairman, Board for Correction of Naval Records, 2 Navy Annex,
Washington, DC 20370-5100

Subj: REQUEST FOR COMMENTS AND RECOMMENDATIONS IN THE CASE
OF FORMER [REDACTED]

Ref: (a) 10 U.S.C.1552
(b) Your LTR Docket No: 1559-99, dated 28 October 1999

Encl: (1) BCNR File
(2) Service Record/Medical Record
(3) VA Records/Medical Records
(4) Test History Report

1. In response to reference (b) and in accordance with reference (a), the provided enclosures were reviewed and the following comments are provided.

2. Enclosures (2) and (3) cover the medical care rendered to former [REDACTED] between 8 December 1980 and 19 March 1990 and 18 October 1994 and 21 September 1998 respectively. I am not in possession of any medical records pertaining to any other dates. In addition, the Veterans Administration Disability rating decisions which are dated 10/30/98 and 3/12/99 were available for review. I note that in his 4 February 1999 letter to the BCNR, that former HM3 Sullivan describes his initial known HIV positive result as occurring in 1993. I do not know the circumstances that surrounded the discovery of his HIV infection, the method used to determine the result or the initial outcome of the discovery since this information was not provided to me.

3. Review of the materials provided indicate that while former [REDACTED] was on active duty he had consistently negative HIV serologic tests through his last recorded negative of 08 May 90 (Enclosure 4). He left active naval service in June 1990. His duty assignments included performing phlebotomy on the San Diego HIV Evaluation and Treatment Unit. He relates in his 4 February 1999 BCNR letter that he had a needle stick injury that occurred on 25 Mar 1983 while he was working in SICU at Naval Hospital San Diego. This needle stick injury is documented in his medical record. The first indication of his HIV infection in the provided records is on 29 November 1994 in a VA physician progress note and in the labs documented from 27 June 1995. His lymphocyte subsets on that date are recorded as CD4 of 564(26%), CD8 of 1042 and a T4/T8 ratio of 0.54. The member was noted to have oral thrush 17 August 1997. Anti-retroviral therapy was not begun until December 1997. As of the last provided value on 28 July 1998, his CD4 was 278(15%) and his T4/T8 ratio had decreased to 0.23. Review of his Veterans Administration Disability Rating Decision dated 10/30/98 indicates that the member's service connection for HIV was granted with 30% disability effective 23 June 1998.

4. There are two issues that must be discussed in assessing the merits of the request of former [REDACTED] Sullivan. The first of these is whether or not he acquired his HIV infection while on active duty. The VA disability rater appears in his 10/30/98 decision has taken the position that because there is known to be a period of seronegative infection, it is possible that the member was infected prior to discharge from active duty and that a service connection is defensible. I concur that it is possible to be discharged from the Navy with a negative HIV serology and yet still be infected with HIV because it does take time for the antibodies that are the basis of our screening tests to appear. That seronegative latency period is most often less than 12 weeks and only rarely as long as 6-12 months. I do not suspect that the documented needle stick injury in 1983 was responsible for the member's HIV infection because of the seven-year seronegative latency period that would be required, but I do not have any difficulty in believing that the member was infected while on active duty at a time closer to his discharge and was

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still serologically negative when he did actually leave the Navy. This is NOT to say, however, that he should be given a medical disability discharge. The presence of HIV infection alone is considered to be neutral for purposes of retention, discharge, or reenlistment. An individual who is found to be HIV infected on their exit serologic test is referred for care to the VA system since being HIV positive alone does not compel retention on active duty. To receive a medical discharge for HIV infection, an HIV infected member's medical condition would have to be assessed by the Central Physical Evaluation Board (CPEB) as unfitting using the VASRD. Using the VASRD, he would not have qualified for a medical disability discharge until 17 August 1997 when he was first noted to have objective evidence of immunodeficiency with his oral thrush in the presence of T4 less than 500 and HIV positivity. Any medical board submitted with the previously documented lab values and clinical findings would likely have been returned from the CPEB as Fit For Duty.

5. In summary, this reviewer concurs with the VA disability rater that a service connection for HIV infection is supportable for former [REDACTED]. It is this reviewer's opinion, however, that a medical disability discharge from active naval service as of June 1990 even if his HIV infection had been documented would not have been granted by the CPEB because he would not yet have met the criteria for granting medical disability discharge. HIV infection is not a reason for retention so his honorable discharge would have been permitted regardless of the HIV serologic tests results. Therefore, I would recommend that the Naval Record of former [REDACTED] NOT be changed since his HIV infection while possibly service connected would still not have sufficiently affected his health in June 1990 to have merited a medical disability discharge.

William J. Turner

[REDACTED]
CAPT, MC, USN